

1984 October 2

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MODESTOS PITSILLOS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE DISTRICT OFFICER NICOSIA,
 2. THE VILLAGE AUTHORITY OF PLATANISTASSA,
- Respondents.*

(Case No. 181/83).

Public Health (Villages) Law, Cap. 259—Public health rates—Occupier of property within area of a particular village—Liable to be assessed with such rates—Special notice of amount so assessed to be sent to non-resident occupier of property—Form of such notice—Section 9(3)(a) of the Law—Appeal to District Officer against assessment—Not necessary to be examined in presence of appellant. 5

Constitutional Law—Equality—Discrimination—Article 28 of the Constitution—Burden is upon applicant to adduce any evidence tending to establish discrimination. 10

The applicant was the occupier of immovable property situated within the area of Platanistassa village and as such he was assessed by the Village Commission of Platanistassa in its capacity as Village Health Authority to pay £12.- as public health rates for the year 1982. As the applicant was a non-resident occupier of property, a special notice*, in writing, of the amount so assessed upon him, was forwarded to him in compliance with section 9(3)(a)** of the Public Health (Villages) Law, Cap. 259. 15

Applicant appealed against the above assessment to the District 20

* The notice is quoted at p. 1055 post.
 ** Section 9(3)(a) is quoted at p. 1053 post.

Officer Nicosia who, after inquiring into the justice of the assessment on the grounds set out in the applicant's appeal dismissed same.

Hence this recourse.

5 Applicant mainly contended:

(a) That his objection was not examined in his presence.

(b) That there is no Village Health Commission in Platanistassa.

10 (c) That the notice of assessment served on him is not in compliance with the Law, as it refers to occupiers' rates and not to public health rates;

(d) That the sub judge assessment amounts to discriminatory treatment in violation of Article 28 of the Constitution.

15 *Held*, (1) that all representations of the applicant concerning his objection to the assessment were placed by the applicant before respondent 1 who carried the necessary inquiry as required by the law having before him all necessary material including the contentions of the applicant; and that, therefore,
20 the presence of the applicant was not necessary and the fact that his appeal was not examined in his presence does not constitute a violation of the rules of natural justice.

(2) That applicant's contention that there is no Village Health Commission for Platanistassa village is unfounded because
25 Platanistassa village is one of the villages which appear in the schedule to the Law, to which section 2 of Cap. 259, the Public Health (Villages) Law, applies.

(3) That since the applicant is the owner and in occupation of immovable property in the village of Platanistassa, as such,
30 he is an "occupier" under the definition of the Law and liable to be assessed with public health rates under section 9(1)(c) of the Law and the Regulations made thereunder; that, therefore, respondent 2 in imposing upon the applicant the annual rate, acted within its powers under the law given that the applicant
35 was an "occupier" under the Law.

(4) That the notice which was sent to applicant was in com-

pliance with section 9(3)(a) of the Public Health (Villages) Law, Cap. 259 and it is clear from the contents of such notice that the assessment imposed upon the applicant was as occupiers' rates under the Public Health (Villages) Law and this is expressly stated in the said notice. 5

(5) That the applicant has not adduced any evidence tending to establish that any discrimination has taken place in this case concerning his assessment as compared with the assessment on other occupiers of the village in a similar position as the applicant; and, therefore, his contention about discrimination must fail. 10

Application dismissed.

Recourse.

Recourse against the rejection by respondent 1 of applicant's appeal against the assessment on him of the sum of £12.- as occupiers' rates for Platanistassa village for the year 1982. 15

Applicant appeared in person.

M. Florentzos, Senior Counsel of the Republic, for the respondent. 20

Cur. adv. vult. 20

SAVVIDES J. read the following judgment. This recourse is directed against the rejection by the District Officer of Nicosia, respondent 1, of the appeal of the applicant against the assessment on him by the Village Authority of Platanistassa, respondent 2, in its capacity as Village Health Commission, of occupiers' rates under the Public Health (Villages) Law in the sum of £12.- for the year 1982. 25

It is the contention of applicant that the sub judice decision:-

(a) was taken in excess and/or abuse of powers;

(b) it violates the provisions of the Constitution and is contrary to the law, the decisions of this Court and the principles of administrative law and 30

(c) it amounts to discriminatory treatment against the applicant in violation of Article 28 of the Constitution.

By his opposition counsel for respondents refused such contentions and alleged that the sub judice decision was lawfully taken in accordance with the Constitution and the law, and in 35

due exercise by the respondents of their powers under the law bearing in mind all material facts of the case.

The facts of the case are briefly as follows:

5 The applicant is the occupier of immovable property situated within the area of Platanistassa village and as such he was assessed by the Village Commission of Platanistassa in its capacity as Village Health Authority to pay £12.- as public health rates for the year 1982. As the applicant was a non-resident occupier of property, a special notice, in writing, of the amount so assessed upon him, was forwarded to him in compliance with section 9(3)(a) of the Public Health (Villages) Law, Cap. 259 which provides as follows:

15 "Whenever any amount is assessed on any non-resident occupier, a special notice of the amount so assessed shall be immediately forwarded by the mukhtar to such non-resident occupier and such occupier may, within twenty days from the date of receiving such notice, appeal to the District Officer in the manner to be prescribed by the rules forwarding at the same time a copy of the appeal to the mukhtar".

20 The applicant objected to such assessment and by letter dated 15th January, 1983, appealed to the District Officer of Nicosia, alleging that the income from his property at Platanistassa did not cover the expenses for maintaining such property. Also that there is no cleanliness in the village and rubbish is scattered everywhere without any effort being made by the Village Health Commission to remove it and maintain the village clean. In concluding his appeal he asked for the refund to him of a sum of £9.250 mils being the balance of an amount of £11.250 mils costs awarded in his favour in a previous recourse No. 415/80.

35 Case No. 415/80 to which reference was made by the applicant in his above letter was a recourse filed by him against the assessment on him of Public Health rates for the year 1980 in the sum of £2.-. From what appears in the record the special notice sent to him under section 9(3)(a) was not in accordance with the law and in consequence invalid. On the date of the hearing a settlement was reached whereby the applicant agreed to pay the

sum of £2.- assessed on him and withdrew his recourse on condition that the Village Health Commission of Platanistassa would pay to him his expenses amounting to £11.250 mils. As a result, the recourse was dismissed and the respondents were adjudged to pay to him £11.250 mils costs. 5

From what appears in the facts of the case, as set out by him in his recourse and his appeal to the District Officer, this amount had not been paid by the respondents to him. This, however, is not a matter touching the substance of the present recourse, as the applicant could at any time after such order for costs was made in his favour proceed to execution for its collection. 10

Both in the facts set out in his recourse and in his written address applicant made insinuations against respondent 2 for maladministration of the public health funds, failure to discharge its duties, discrimination in the public health assessment against the applicant and other allegations tending to prove that respondent 2 in making the assessment on him was guided by hatred and dislike for him. 15

Respondent 1 proceeded to inquire into the justice of the assessment on the grounds set out in the applicant's appeal in accordance with section 9(3)(b) of Cap. 259 and dismissed same. His decision was communicated to the applicant by letter dated the 25th February, 1983, hence the present recourse. 20

In addition to the grounds set out in the recourse, applicant by his written address contended— 25

- (a) that his objection was not examined in his presence,
- (b) there is no Village Health Commission in Platanistassa,
- (c) the notice of assessment served on him is not in compliance with the Law, as it refers to occupiers' rates and not to public health rates. 30

The contention of the applicant that his appeal was not examined in his presence, does not, in the circumstances, constitute a violation of the rules of natural justice. All representations of the applicant concerning his objection to the assessment were placed by the applicant before respondent 1 who carried the necessary inquiry as required by the law having before him all necessary material, including the contentions of the 35

applicant. Therefore, the presence of the applicant was not necessary. In the result, applicant's complaint that he was not present when his appeal was examined, is unfounded.

Also, applicant's contention that there is no Village Health Commission for Platanistassa village is unfounded. Platanistassa village is one of the villages which appear in the Schedule to the Law, to which section 2 of Cap. 259, the Public Health (Villages) Law, applies.

It is an uncontested fact that the applicant is the owner and in occupation of immovable property in the village of Platanistassa. Therefore, as such, he is an "occupier" under the definition of the Law and liable to be assessed with public health rates under section 9(1)(c) of the Law and the Regulations made thereunder. Respondent 2 in imposing upon the applicant the annual rate, acted within its powers under the law given that the applicant was an "occupier" under the Law. For such rate, however, to be recoverable, respondent 2 had to comply with sub-section (3)(a) of section 9 in that due to the fact that the applicant was a non-resident occupier, a notice had to be sent to him. It is not disputed by the applicant that a notice was sent to him but what he alleges is that such notice is not in compliance with the provisions of the Law. Copy of such notice has been attached as Appendix to the written address of the applicant and it reads as follows:

"SPECIAL NOTICE.

Section 9(3)(a) of the Public Health Law, Cap. 259.
Mr. Modestos Pitsillos, Nicosia.

You are hereby informed that you have been assessed in the sum of £12 as occupiers' rates for the village of Platanistassa for the year 1982.

Date: 25.12.1982.

(Sgd) Chairman Village
Authority."

It is clear from the contents of such notice that the assessment imposed upon the applicant was as occupiers' rates under the Public Health (Villages) Law, and this is expressly stated in the said notice.

The applicant in advancing his argument sought to rely on

a similar ground raised in his previous recourse, but it is clear from the contents of the notice which was sent in that case that instead of the notice being a notice under the Public Health Law, it was a notice under section 8(6) of Cap. 287 and this is the reason why it was treated as an improper notice. Having perused the contents of the special notice sent to the applicant, I find that such notice is in compliance with section 9(3)(a) of the Public Health (Villages) Law, Cap. 259, and, therefore, the allegation of the applicant in this respect is untenable.

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Having examined the various exhibits before me which include extracts from the relevant files, I am satisfied that in considering applicant's appeal, the District Officer carried out a proper inquiry and reached the proper conclusion in dismissing his appeal and no evidence has been adduced by the applicant of any relevant facts which have not been taken into account by the District Officer in this respect. As to the allegation of discrimination in his case, the applicant has not adduced any evidence tending to establish that any discrimination has taken place in this case concerning his assessment as compared with the assessment on other occupiers of the village in a similar position as the applicant.

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For all the above reasons, I find that this recourse is unfounded and is hereby dismissed with £15.- costs against the applicant.

Recourse dismissed. Applicant to pay £15.- costs.

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